



CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue, Portland, Oregon 97201, [www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)



## RESIDENTIAL DEMOLITION ORDINANCE



Photo: Elisabeth Neely

### **IMPLEMENTATION REPORT TO CITY COUNCIL**

Portland Bureau Of Development Services  
Development Review Advisory Committee

November 2016



## ACKNOWLEDGEMENTS

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# I. EXECUTIVE SUMMARY

## A. Introduction

The City Council adopted a Residential Demolition Delay Ordinance (“Ordinance”), which became effective in April 2015. The Ordinance removed the one-for-one exception, expanded the notice provisions and completely amended the appeals process. It also included a new section requiring notice for major alterations and additions, which provides surrounding neighbors notice of construction activities that could affect them. From April 20, 2015 through October 31, 2016, BDS has accepted approximately 562 residential demolition permit applications that were subject to the Ordinance. Implementation costs, including staff, printing, mailing and appeal fees, totals approximately \$224,734.



## B. What Worked

Overall, the Ordinance implementation process has gone well. BDS conducted significant outreach to the building community, neighborhood organizations and City staff. The notice provisions have succeeded in alerting neighbors that a nearby house will be demolished and providing an opportunity to determine if they want to try to save the house. And in general, the appeals process has run smoothly. In addition, BDS staff developed implementation guides that have been helpful in addressing specific scenarios and interpreting the Ordinance.

## C. What Didn't Work

Some specific aspects of the appeals process and language caused some challenges, such as a lack of an incentive for property owners to negotiate and the need to clarify some language and appeal criteria. The appeal process also highlighted existing equity issues regarding who has the ability to file an appeal and save the structure. Although the notice provisions have worked well generally, neighbors have expressed a desire to expand the number of houses that receive door hangers.

Another issue arose during Ordinance implementation as a result of a change in the commercial provisions of the State Building Code. Previously, BDS could only regulate demolitions of 1-2 family dwellings. But the State Building Code recently removed those limitations. As a result, the demolition delay provisions now apply to sites with any type of residential structure based on the Title 24 definition of “residential structure.” Consequently, the Ordinance is currently being applied to multi-family dwellings, such as apartment buildings, which was not intended when the Ordinance was drafted.

## D. Key Recommendations

This Implementation Report contains several recommendations. The following are the most significant:

- Add a definition of “residential structure” that narrows the scope of the Ordinance to just 1-2 family houses
- Create administrative rules based on the BDS implementation guides to help clarify technical issues that have arisen while applying the Ordinance
- Make minor modifications to the definitions and appeal language for clarity
- Consider adding incentives for property owners to meet and negotiate with neighbors
- Consider expanding the scope of door hanger notifications



## II. BACKGROUND

The residential demolition delay provisions of the City Code (Chapter 24.55) previously allowed neighborhood organizations to request a 120-day demolition delay extension without a requirement that they be actively pursuing a plan to save the structure. The prior version also included an exception to the delay when a demolition application was accompanied by an application for a replacement structure. This was known as the “one-for-one exception.” In 2013-2014, approximately 75% of the residential demolitions were not subject to a delay due to the one-for-one exception. Because so many houses were being demolished without notice or delay, the Historic Landmarks Commission recommended that Chapter 24.55 be revised to eliminate the one-for-one exception in its annual report to the City Council in July of 2014.

In response to the Historic Landmarks Commission’s recommendation, the City Council directed the Bureau of Development Services (BDS) to work with the Development Review Advisory Committee (DRAC), the Historic Landmarks Commission and other stakeholders to develop recommended changes to the demolition delay chapter. The City Council adopted a Residential Demolition Ordinance (“Ordinance”), effective April 20, 2015, that removed the one-for-one exception, amended the appeal provisions and expanded the notice requirements. Specifically, the Ordinance removed the 120-day delay extension that neighborhood coalitions and associations could request and replaced it with a 35-day mandatory delay, with a possible 60-day extension following a successful appeal, for a total possible delay of 95 days. The Ordinance defined “demolition” and added a section regulating Major Residential Alterations and Additions (“MRAAs”) to provide greater transparency to neighbors about projects that could affect livability and raise safety concerns. In addition, the Ordinance significantly expanded the notification requirements for residential demolitions by adding mailed notice to physical properties within 150 feet of the demolition site, mailed notice to neighborhood associations, neighborhood coalitions, Restore Oregon, and the Architectural Heritage Center and posted notice via door hangers for the surrounding properties. It also required applicants for MRAA projects to provide mailed notice of the project to neighborhood associations and coalitions and posted notice via door hangers on surrounding properties.



# III. IMPLEMENTATION

## A. BDS and Agency Partner Process and Implementation Costs

### 1. BDS Agency Partner Process

Implementing the Ordinance required numerous changes to Bureau of Development Services (BDS) processes and computer programming to accommodate the mailing requirements and new deadlines. Nearly every section of BDS staff was impacted by the Ordinance, including:

- Plans examiners determining whether a project is a demolition or an MRAA
- Communications Section preparing outreach materials and training receptionists to field demolition-related calls
- Finance Section processing appeal fee waivers
- Permitting Services and Land Use Services training specially dedicated staff to process residential demolition applications to ensure compliance with the new requirements and for consistency
- IT programming and TRACS changes to accommodate the new processes
- Code and Policy Section coordinating Ordinance implementation, facilitating DRAC Demolition Subcommittee meetings, drafting Ordinance and Ordinance amendments, and conducting community outreach and staff training
- Inspections Division determining whether work on a site is a minor remodel, MRAA or demolition, explaining MRAA requirements to customers and ensuring compliance with the Ordinance in the field

The following is a summary of the residential demolition permits BDS has processed since April 20, 2015:

	<u>2015</u>	<u>2016</u>
Permit Intakes Subject to Ordinance:	257	305
Permit Intakes Not Subject to Ordinance*:	17	48

\* Of the permit applications not subject to the Ordinance, most were in areas without a Residential Comprehensive Plan Map designation. Other reasons include dangerous building/code compliance cases, houses being moved either to a different place on the same site or to a different site, and demolitions subject to Zoning Code 120-day delay.

### 2. Implementation Costs

The approximate costs to implement the Ordinance from April 20, 2015 – October 31, 2016 are as follows:

BDS Staff Costs (based on one FTE, Permit Tech III + 45 min. Permit Tech II for each permit):	<b>\$194,113</b>
Printing and Mailing Costs:	<b>\$15,573</b>
Appeal Fees Paid by the City:	<b>+ \$15,048 = \$224,734</b>

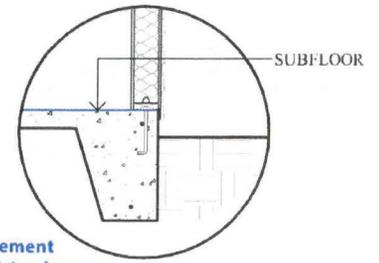
## B. BDS Outreach



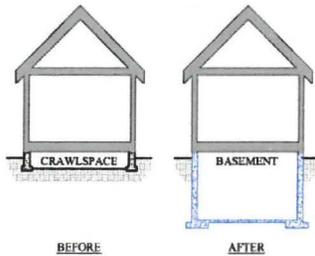
In addition to internal training and procedural changes, BDS provided significant outreach to the development community, neighbors and the general public. BDS emailed service level updates and published articles in the Bureau’s e-newsletters, the Checksheet and the Plans Examiner, to inform City staff and the public about the Ordinance. Key staff conducted several presentations to neighborhood associations, explaining the new provisions, and BDS conducted a “Lunch and Learn” presentation to members of the public, including developers, property owners and neighbors. BDS also presented information to the Development Review Advisory Committee (DRAC) at several meetings before and since the effective date of the Ordinance. BDS staff in the Field Issuance Remodel (FIR) program worked closely with their customers who do frequent residential remodels to explain the notification provisions of the new Major Residential Alterations and Additions (MRAA) portions of the Ordinance.

### C. Implementation Guides for Demolitions and Major Residential Alterations and Additions

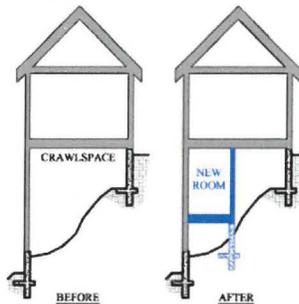
BDS plans examiners and communications staff developed detailed and comprehensive informational guides complete with architectural drawings that explain how to interpret the definitions in the Ordinance and outline various scenarios that staff and customers might encounter. These documents have proven extremely helpful in interpreting the Ordinance and identifying issues that may need to be clarified in the future.



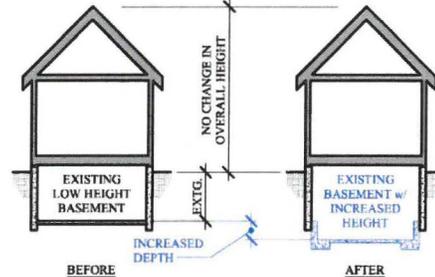
**Figure 1: Excavating a crawl space to create a full basement**



**Figure 2: Adding structure below the lowest existing story to create useable space**



**Figure 3: Existing basement excavated without raising house**



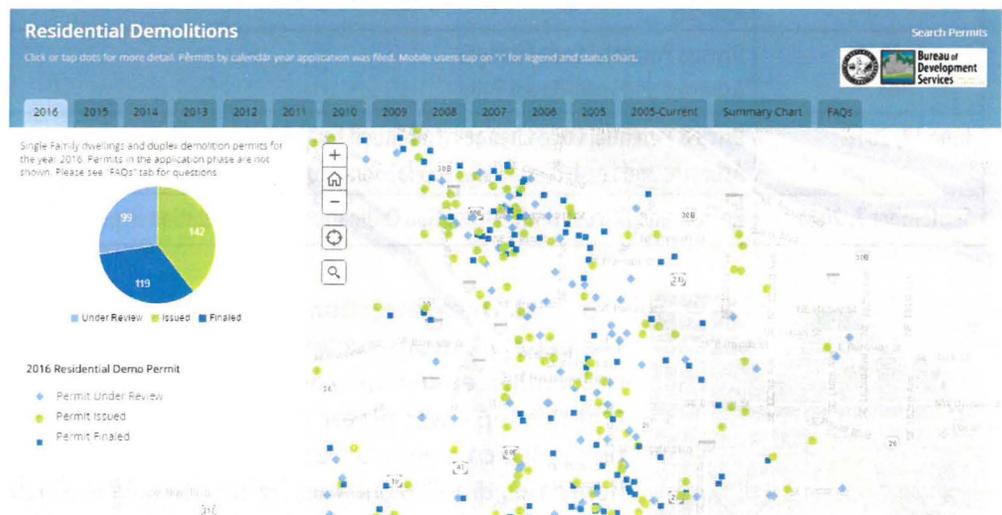
### D. Certification Regarding Asbestos and Lead-Based Paint

As part of the implementation process, BDS staff developed a Certification Regarding Asbestos and Lead-Based Paint in response to community concerns. The Certification provides citations to state and federal regulations governing asbestos and lead-based paint. It requires the owner or owner’s representative to sign under penalty of perjury that the area of disturbance has been tested for the presence of asbestos and lead-based paint and will be remediate, or that the regulations don’t apply and why. The form also provides contact information for the relevant regulatory agencies. Although this form does not add any new requirements, it does assist the regulatory agencies if they have an enforcement case against an owner by showing the owner knew of the requirements and attested under penalty of perjury that the owner complied with the regulations.

### E. BDS Webpage

BDS created a webpage to assist the public and City staff to have a single place where information on residential demolitions and major alterations/additions is located. The website includes links to the Ordinance, demolition-related forms (such as the Asbestos and Lead-Based Paint Certification), and information on demolition permits, community outreach materials, asbestos and lead-based paint resources, deconstruction information and other helpful materials. BDS recently added an interactive residential demolition map to PortlandMaps that allows users to view residential demolition permit activity by year going back to 2005. The map shows trends over this

11-year period, along with a visual representation of where in the City demolitions are occurring. BDS also created a “Track-It” to receive comments, questions, suggestions and concerns relating to the Ordinance. BDS has received and responded to several Track-Its and other emails regarding residential demolitions and related topics since creating the website.



## F. DRAC Demolition Subcommittee Meetings

Since the Ordinance took effect in April 2015, BDS has held 10 DRAC Demolition Subcommittee meetings as follows:

DATE	TOPICS DISCUSSED
June 17, 2015	Debrief of Ordinance Overview of BDS Outreach and Education Efforts; Review of BDS Materials Hazardous Materials Update Appeals Deconstruction Update Demolition Tax
October 26, 2015	Major Alterations/Additions Implementation Notification Issues with Demolitions Other Implementation Issues Hazardous Materials Update – SB 705 Implementation Demolition Tax
December 4, 2015	ONI Demolition Contact Database Update on Major Alterations/Additions Implementation Issues from the Community Demolition Permit Appeal Issues Update on Demolition Tax Hazardous Materials Update – SB 705 Implementation
December 11, 2015	What Constitutes a Demolition “Epidemic” Review City Council Concerns Re. Promoting Demolition Tax Recommendations to Council on Demolition Tax Based on Issues Raised in DRAC Letter
December 18, 2015	Demolition Tax Update from Mayor’s Office and Commissioner Novick’s Office Mike Molinaro’s Presentation on a System to Identify Properties of Significance Recommendations to Council on Demolition Tax
March 30, 2016	Historic Resources Inventory Definition of Demolition Asbestos and Lead-Based Paint Appeals
April 19, 2016	Update on ONI Notification Process Update on Workgroup Meeting to Discuss Amending Definitions in Ordinance Asbestos and Lead-Based Paint Appeals
June 6, 2016	Discuss Potential Code Changes Asbestos and Lead-Based Paint
June 17, 2016	Discuss Potential Code Changes (continued from 6/6/16 meeting) Asbestos and Lead-Based Paint (update on DEQ regulations)
September 7, 2016	Review and Discuss Draft Demolition Ordinance Implementation Report



## G. Deconstruction

The issue of deconstruction arose during the initial discussions of amending the residential demolition provisions of the City Code, and the City Council determined that this topic was better addressed by the Bureau of Planning and Sustainability (BPS). BPS convened a Deconstruction Advisory Committee, which has met numerous times in the past 18 months. A Deconstruction Ordinance was drafted, and the City Council approved the ordinance, effective on October 31, 2016.



## IV. POST-IMPLEMENTATION ISSUES

### A. What worked:

- The process
  - Throughout the process, BDS has continued to have active input from a variety of stakeholders, including BDS staff, agency partners (BPS, etc.), residential construction industry representatives, neighborhood representatives and representatives from the historic resources community
  - BDS staff and agency partners implemented the Ordinance in just eight weeks with relatively few issues
- Notice
  - Neighbors now know when a demolition is going to happen in their neighborhood and they have contact information, so they can meet with property owner to try to save the structure
  - Neighborhood associations and coalitions, Restore Oregon and the Architectural Heritage Center get notice of demolition permit applications and can determine if a house is one they want to try to save
  - Door hangers help neighbors take precautions prior to a demolition or major remodel
  - For major alterations/additions, notice alerts neighbors to large projects in their neighborhood
- Definitions – a definition of demolition has helped staff, customers and the public have a common understanding of how much work can be done on a building before it is considered a demolition or major remodel
- Appeals
  - The appeals process has eliminated the one-for-one exception that allowed most of the demolition permit applications to avoid any notice or delay
  - The appeal criteria ensure that an appeal cannot be filed simply to delay the demolition because the appellant must demonstrate there is a viable plan to save the structure
  - Anyone can appeal for additional demolition delay to try and save a structure; the appeal fee is waived if the neighborhood association or organization agrees to sponsor the appeal
  - Appeals to the Code Hearings Officer provides a neutral decision-maker
- Outreach
  - Lunch and Learn
  - Presentations to neighborhood associations and coalitions
  - BDS website
  - Interactive PortlandMaps demolition map

### B. What didn't work:

- Appeals
  - Criteria need clarification, including what constitutes a pro forma budget, how does an appellant demonstrate significance of the structure to the neighborhood, how detailed does the plan to save the structure need to be, and does the plan need to be completed within the delay period
  - No incentive for the property owner to meet or negotiate
- Need for more clarity in definitions – as the Ordinance has been implemented, various technical questions have arisen, such as how to determine what constitutes a wall
- Equity – the appeal process in the Ordinance has highlighted existing equity issues with who has the ability to save or move a structure that is significant to the neighborhood
- Scope of demolition delay provisions
  - New provisions of the State Building Code, combined with the definition of “residential structure” in Title 24 of the City Code, have resulted in the scope of the Ordinance being applied to multi-family dwellings, such as apartment buildings, that was not intended when the Ordinance was drafted

The following section provides more detail on some of the specific challenges and issues that have arisen in implementing the Ordinance, following by possible solutions.

### C. Demolition Permit Appeals

The new appeal process is one of the key provisions of the Ordinance. It allows anyone with an interest in saving a residential structure from demolition to put together a plan to save the house and present that plan to the Code Hearings Officer (CHO). The criteria for granting an appeal include:

1. The requesting party has sent a letter to the property owner or property owner’s representative to request a meeting to discuss alternatives to demolition;
2. The appellant must show that the property subject to the demolition permit application has significance to the neighborhood. Evidence of the significance may include, but is not limited to, architectural significance, the age and condition of the structure or other factors;
3. The requesting party has a plan to save the structure; and
4. The requesting party has a reasonable potential to consummate the plan within 95 days of the date the Bureau accepted the complete demolition permit application by providing a pro-forma budget and either evidence of funds on hand or a fund raising plan sufficient to meet the financial requirements of that budget.

Since the Ordinance implementation, BDS has processed 12 appeals. Of those, 8 were granted and 4 were denied. Of the 12 structures in which an appeal was filed, one has been saved from demolition. Other structures may have been saved via private negotiations without an appeal. Of the appeals that were denied, all but one were denied for failure to provide adequate proof of a “reasonable potential to consummate the plan.” The other denial was for failure to timely file the appeal. Although the appeal process has generally worked smoothly, BDS received several complaints from appellants regarding the requirement for a pro forma budget. Many appellants said the requirement was onerous because they didn’t have enough time or information to complete a realistic budget. The pro forma budget requirement was recommended by a member of the United Neighbors for Reform as a means of demonstrating that the funds on hand or the fundraising plan was reasonable. But because of numerous complaints both from appellants and the Code Hearings Officer, BDS is recommending replacing this requirement with some other method of demonstrating the financial ability to consummate the plan to save the structure.

BDS solicited input from appellants and members of the public on the appeal process. BDS staff also met with the Code Hearings Officers to discuss the process and solicit input on how to improve it. The following is a list of issues appellants and members of the public raised, followed by input the Code Hearings Officers provided. At the end of this section is a table that contains the issues raised and possible alternatives for addressing those issues.

#### 1. Appeal-Related Issues Appellants and Members of the Public Raised

- What is a “pro forma budget”? How can a budget be prepared when there isn’t enough information by the deadline to file the appeal?
- Sometimes the permit applicant is someone other than the actual owner. The County records don’t always accurately reflect the person or entity with authority to negotiate a potential purchase or other alternative to demolition with the neighbors. When the property is being sold, who are the appellants supposed to contact – the current owner or the buyer? The Ordinance requires that they contact the owner, but when a property is in escrow, the owner could change. If they go by the letter of the Ordinance, they would be negotiating with the seller, rather than the future owner.
- How can the appellant demonstrate significance of the structure to the neighborhood?
- How detailed does the plan to save the structure need to be?



- Does the plan need to be consummated within the 95 days? It is difficult to negotiate and actually close a transaction within that time. If the plan is to move the structure, this alternative cannot be completed within 95 days given the time for obtaining permits to move a building.
- How detailed does the fundraising plan need to be?
- What is sufficient documentation of funds on hand?
- Activity occurring during demolition delay period – sometimes the property owner or purchaser may do work, such as asbestos abatement, that tears out walls and diminishes the value and increases cost to rehabilitate the structure and makes it more difficult to re-sell
- No incentive for property owner to meet with appellants/neighbors to discuss alternatives to demolition; possibly have a requirement that the meeting occur either prior to or at the appeal hearing or within 5 to 10 days of a request to meet
- Encourage neighborhood associations/coalitions to reach out to constituents to inform them regarding their rights regarding demolitions
- Who has authority to file an appeal on behalf of a neighborhood association or coalition?
- A toolkit for appeals to assist in putting the appeal together would be nice to have
- How does staff determine if an appeal application is complete?

## 2. The Code Hearings Officers’ Suggestions Regarding Appeals

- Significance: What does “significance” in criteria #2 mean? Instead of having language that states, “may include, but is not limited to, architectural significance . . . and other factors,” the CHO would prefer to have more definite language, such as, “significance means age (50 years or older), or architectural significance as evidence by \_\_\_\_\_,” and delete the “and other factors” language.
- “Reasonable Potential to Consummate”: Does this mean the deal has to close within 95 days? Does it mean there just has to be a signed agreement? Open escrow? Other?
- Pro Forma Budget/ Evidence of Funds on Hand: Evidence that the plan can be consummated should be able to be submitted at the hearing, rather than having to submit it with the appeal. The budget language should be in the “plan” section of the code.
- Incentive for Property Owner/Developer to Negotiate: The CHO has no power to force the owner to meet and negotiate in good faith. It would be helpful if the code language included a provision that required the owner to provide evidence that they have met with the appellant by the 95th day. If no evidence is presented, then the CHO can extend the delay for some additional number of days (15, 20, 30 days) or until the owner presents evidence to the CHO that a meeting occurred. The code could include a provision for mediation, similar to what is available between banks and homeowners prior to foreclosure, with a requirement to certify that mediation occurred prior to permit issuance. A provision could be added requiring the property owner to provide evidence regarding why the structure can’t be saved or why it needs to be demolished. Is there a way to set up an “option fund” for neighbors to draw on?

ISSUE	POSSIBLE ALTERNATIVES
What is a “pro forma budget”?	Delete the requirement Explain the term Require a simple budget for a plan to save the structure
Sometimes the permit applicant is not the owner, and the records don’t accurately reflect the person or entity with authority to negotiate a potential purchase or other alternative to demolition with the neighbors. Sometimes the owner at the time of the permit application isn’t the owner at the time of demolition.	The notification letters all contain a copy of an appeal form that has the owner’s name and contact information. There is still an issue when the Assessor’s property records don’t reflect a recent property sale. One possible solution is to require the property owner to meet with the appellant as part of the demolition delay calculations such that the 95-days can be extended by the Code Hearings Officer for a certain period based on when the property owner meets with the appellant.

ISSUE	POSSIBLE ALTERNATIVES
How can the appellant demonstrate significance of the structure to the neighborhood?	<p>Make criteria more definitive</p> <p>Leave criteria open and allow the Code Hearings Officers to use their discretion to determine significance</p>
How detailed does the plan to save the structure need to be?	<p>Provide more guidance in administrative rules</p> <p>Provide links to samples submitted by successful appellants on BDS website</p>
Does the plan need to be consummated within the 95 days? It is difficult to negotiate and actually close a transaction within that time. If the plan is to move the structure, this alternative cannot be completed within 95 days given the time for obtaining permits to move the structure.	<p>Clarify when the plan needs to be consummated</p> <p>Amend language to state specific actions that should/are likely to occur within the 95-day period, such as opening escrow, having a signed agreement, etc.</p> <p>Possibly amend language to require an “ability to confirm a viable plan is in place within 95 days,” rather than “reasonable potential to consummate plan within 95 days”</p>
How detailed does the fundraising plan need to be?	<p>Clarify plan requirements in administrative rules</p> <p>Provide links to samples submitted by successful appellants on BDS website</p>
What is sufficient documentation of funds on hand?	<p>Clarify what constitutes evidence of sufficient funds via administrative rules</p> <p>Provide links to samples submitted by successful appellants on BDS website</p>
Can evidence of the plan, funds, etc. be submitted at the hearing? Sometimes not all of the information is available by the appeal deadline.	<p>Allow additional evidence of funds, the plan, etc. to be submitted at the time of the hearing, provided the minimum submittal requirements for the appeal are met at the time the application is filed</p>
Equity issues – how does the City address the disparity in financial ability to save properties in neighborhoods in which the residents don’t have the personal financial means to purchase or move structures?	<p>Keep process as it is.</p> <p>Create a fund that helps finance property purchases or move the house from the General Fund or some other source.</p>
A meeting with the neighbors is not currently required and there is no incentive for the owner to meet.	<p>Add a requirement that the owner meet formally with any party who sends a letter per the Ordinance to the owner within [35-days, before appeal hearing, within 5-10 days, other?]</p>
Only neighborhood association or coalition qualify for fee waiver	<p>Allow anyone to get a waiver</p> <p>Keep existing limitation</p> <p>[Note that BDS cannot use permit fees on anything other than Building Code program-related costs. An appeal under the City’s Demolition Ordinance is not part of that program.]</p>
Interior activity during demolition delay period undermines value and increases cost to renovate	<p>Restrict activity during delay period [but there may be an issue if no permit is required]</p> <p>Leave as is</p>
Who has authority to file an appeal on behalf of a neighborhood association or coalition?	<p>Work with neighborhood associations and coalitions to get information to ONI; ONI is creating a database that will have the contact names for purposes of demolitions; require ONI to have clear and consistent contact information for each neighborhood organization</p>
Would like a toolkit for appeals to assist in putting appeal together	<p>Restore Oregon has this together and it is available on their website</p>

ISSUE	POSSIBLE ALTERNATIVES
How does BDS staff determine if an appeal application is complete?	Staff have a checklist to make sure all pieces required by the Ordinance are submitted at the time of the application. Staff does not review or evaluate the content, only that the documents are in the appeal packet.

#### D. Equity Issues in Demolition Appeals

In addition to the above issues, the appeal process highlighted the equity issues that continue to exist for saving structures subject to demolition permits. Only those who can demonstrate a financial ability to purchase or move a structure have succeeded in their appeals. With the exception of the one appeal that was denied for failure to timely file, all others were denied because the appellant could not demonstrate the financial ability to consummate a plan to purchase or move the structure. Those who succeeded in their appeals were individuals with personal cash on hand to pay at least a significant deposit, along with a letter of credit, or they had enough cash on hand to purchase the property outright. The process also does not work well for those who are not connected with the neighborhood organizations or who don't have the capability or capacity to file an appeal due to lack of time and other resources. It was clear from the process that the properties in the more affluent neighborhoods were the only ones that had a potential to be saved under the Ordinance. It is important to note that this disparity existed in the prior version of the City Code in that no homes subject to the 120-day delay were saved; all homes that were saved under the prior version of the Code were saved without a delay by someone with enough cash negotiated a sale or move the house. Basically, without a subsidy or outside funding source, this gap will remain. It is also important to note that the DRAC Subcommittee lacked adequate representation from underserved communities, including low income communities and communities of color. Although BDS invited various stakeholders from these communities, they were not always able to participate. Going forward, BDS will increase its efforts to have more representatives from these stakeholders.

**Issue:** The process has historically only allowed those with significant financial resources to purchase properties slated for demolition. The appeal results under the Ordinance highlight this equity issue.

**Recommendation:** Addressing the financial disparity will require a commitment of dedicated funds to purchase properties and rehabilitate them for future sale.

**Issue:** The DRAC Demolition Subcommittee needs more representation from underrepresented communities.

**Recommendation:** BDS staff will conduct more outreach to underrepresented communities to get more stakeholders to participate.

#### E. Applicability of Demolition Delay and Notice Provisions to Multi-Family Dwellings

The Ordinance did not revise the code language that outlines where the demolition delay applies. It states, "The residential demolition delay regulations of this Section (24.55.200) apply to sites with residential structures in areas with a residential Comprehensive Plan Map designation." (24.55.200(B).) Since the 1990's, BDS has interpreted the term "residential structure" in this section of the code to mean 1-2 family dwellings (houses and duplexes). The basis for this interpretation is twofold. First, 1990 amendments to the residential demolition provisions limited where the regulations apply to areas with a residential Comprehensive Plan Map designation. The prior BDS version of the residential demolition provisions applied to all residential structures, including apartments and residential hotels.

Second, BDS was preempted by the State Building Code from regulating any residential structures with three or more dwelling units by the commercial building provisions of the State Building Code. However, the most recent version of the Building Code specifically allows a local jurisdiction to enact legislation governing commercial demolitions, including multi-family dwellings, providing that legislation does not contradict any specific provisions of the Building Code.

The Ordinance as codified in City Code Chapter 24.55 is silent on whether it applies to all residential structures or just 1-2 family dwellings. Nor does it define "residential structure." But the definitions section of Title 24

does contain a definition of “residential structure” as follows: “Residential structure means any building or other improvements designed or intended to be used for residential purposes.” (PCC 24.15.140.) The definition encompasses not only 1-2 family structures, but all residential structures, including apartment buildings and other multi-family buildings. This definition, combined with the change in the State Building Code that allows local jurisdictions to regulate commercial demolitions, significantly broadened the applicability of the Ordinance to include all residential buildings. BDS issued a Service Level Update announcing the new interpretation effective on May 17, 2016, and has been applying the Ordinance to all residential demolitions.

BDS staff discussed the impact of this new interpretation with the Demolition Subcommittee. Although some members of the Subcommittee would like to see the demolition provisions apply to commercial and 1-2 family dwellings, BDS recommends amending Chapter 24.55 to specifically limit the applicability to 1-2 family dwellings for several reasons. First, the Subcommittee, which developed the language of the Ordinance, does not have stakeholders from the commercial construction sector or other relevant stakeholders. Second, the discussions and assumptions of the Subcommittee when it developed the Ordinance were based on the Ordinance applying only to 1-2 family dwellings. Consequently, the provisions are impractical to apply in most commercial settings. For example, the Ordinance requires door hangers to be posted on the ten surrounding properties of the building to be demolished. This requirement assumed the surrounding properties would be single-family houses or duplexes. There would be no practical way of posting door hangers on a 20-story building, much less 10 such buildings. Third, the Subcommittee was not tasked with addressing an expansion of the residential demolition provisions to encompass multi-unit, commercial structures, so it would need direction from the City Council to expand its scope.

**Issue:** BDS has been applying the residential demolition provisions of Title 24 only to 1-2 family dwellings since the 1990’s. Based on changes in the State Building Code and the existing definition of “residential structure” in Title 24, BDS has been applying the Ordinance notice and delay provisions to all residential structures, including apartment buildings, other multi-family dwellings. It is also not clear how BDS should treat mixed-use buildings.

**Recommendation:** BDS recommends adding a provision to the Ordinance limiting the applicability to 1-2 family structures because the Ordinance was drafted and discussed based on this limited applicability. If the scope of the Ordinance is going to be permanently expanded, there should be a different subcommittee convened to address issues specific to commercial demolitions, including apartment buildings. The notice and posting provisions of the Ordinance were not intended to apply to commercial structures and are not effective or practical as applied to such buildings. Moreover, BDS does not have the staff to perform the additional work required in expanding the scope of the Ordinance. Housing and affordability are also issues that could be considered if a different subcommittee is created to discuss commercial/multi-family housing demolitions.

#### **F. Applicability of Demolition Delay and**

##### **Notice Provisions Outside Residential Comprehensive Plan Map Areas**

The Ordinance also did not revise the code language that outlines where the demolition delay applies. It states, “The residential demolition delay regulations of this Section (24.55.200) apply to sites with residential structures in areas with a residential Comprehensive Plan Map designation.” During the Deconstruction Advisory Committee meetings in the past year, the issue arose regarding whether the deconstruction requirements should apply to 1-2 family residential structures City-wide or just in areas with a residential Comprehensive Plan Map designation to be consistent with the Demolition Ordinance. The deconstruction ordinance as adopted by the City Council applies to all 1-2 family residential structures, regardless of their Comprehensive Plan Map designation. A similar discussion arose in the Demolition Subcommittee. BDS staff noted that applying the Demolition Ordinance to all residential structures would significantly increase the workload in the Permit Center, and that demolition of residential structures in commercial areas have a different type of impact on the surrounding properties than similar properties in residential neighborhoods. Moreover, the Demolition Subcommittee never addressed these properties when it made the initial recommendations to the City Council on the provisions of the Demolition Ordinance. As noted above, many of the provisions, such as door hangers and neighbor notice, would not be practical in commercial areas. And, as discussed above, the Demolition

Subcommittee does not have the proper stakeholders to address how to apply demolition delay and notification in commercial areas.

**Issue:** The Ordinance only applies to areas with a residential Comprehensive Plan Map designation.

**Recommendation:** The DRAC Demolition Subcommittee was not tasked with reviewing the applicability of the residential demolition delay and notice provisions outside of the areas with a residential Comprehensive Plan Map designation. If the scope of the Ordinance is to be expanded, BDS recommends convening a new subcommittee with appropriate stakeholders. In addition, BDS does not have the staff to perform the additional work required of expanding the scope of the Ordinance without additional resources, so funding of any expanded scope would need to be addressed.

### **G. Major Residential Alterations and Additions (MRAA)**

In general, the MRAA provisions of the Ordinance have been working very well. The Ordinance requires that an owner who applies for a permit for a major alteration or addition to a residential structure email notice to the neighborhood association and coalition and post a door hanger on the surrounding properties at least 35 days before the building permit is issued. There are no rights to seek an extension of the 35-day waiting period. BDS staff and customers including the Field Issuance Remodel (FIR) participants have raised concerns regarding the language stating that, if 50% or more of an exterior wall is increased or replaced, then it is a major addition or alteration. They indicated that trying to determine the percentage of a wall that is being maintained or replaced is very difficult to apply. Instead, they recommended eliminating this provision and decreasing the square footage trigger from 800 feet to 500 feet as an easier way to capture significant addition and alteration projects.

**Issue:** The portion of the definition of “major alteration or addition” that includes increasing or replacing 50% or more of an exterior wall is too difficult to apply.

**Recommendation:** Remove provision and decrease the square footage trigger from 800 square feet to 500 square feet to capture more projects.

BDS staff also recommended amending the door hangers to include the property address of the house being remodeled because it currently only has the property owner’s address. This has led to some confusion for the neighbors. Staff also recommended adding language to the door hangers stating that some work can be done without a permit during the 35-day notice period. They also recommended making it clear to staff and customers that MRAA projects can still be in the FIR program, but demolitions cannot.

**Issue:** Door hangers don’t contain information such as the property address or that some work can be done during the delay period.

**Recommendation:** Amend the door hangers to include the above information.

Another issue members of the public raised was how we address people who demolish a structure before the end of the demolition delay period. Similarly, the issue arose regarding how we address MRAA’s that become demolitions during the course of the work. [see MRAA Guide, pp. 12-15]

**Issue:** How does BDS address situations where a structure is partially or completely demolished before the demolition delay period has run or the project starts as an MRAA, but later changes in scope and becomes a demolition.

**Recommendation:** In either case, BDS issues stop work orders until the requirements of the Code have been met. For demolitions, the 35-day notice must be sent and the time to appeal must have run before work can continue. For MRAA’s, the applicant is required to provide the 35 day notice and post door hangers if the applicant’s project starts as a minor revision and later becomes a major alteration or addition. If the project goes from an MRAA to a demolition, then the applicant will need to obtain a new permit and comply with all of the notice and delay provisions for the demolition. All work must stop during notice period. Property owners are subject to code enforcement actions, including fines, if they continue work after a stop work order is issued.

## H. Creating Administrative Rules

The Demolition Ordinance language was intentionally drafted using general terms because not all scenarios or possible interpretations could be anticipated. Such specifics are best addressed in administrative rules, guides and staff standard operating procedures. BDS staff developed two comprehensive informational guides, one for residential demolitions and one for MRAA's, to assist staff, customers and the public in understanding how BDS will administer the Ordinance. These guides address such technical issues as how to measure a wall area for an MRAA to determine if the wall has been demolished, and what is considered the "subflooring" for a demolition to determine whether the work contemplated is a demolition. Now that BDS has been implementing the Ordinance for over 18 months, various scenarios and questions have arisen in addition to those contemplated in the guides. BDS staff would like to use these informational guides, along with subsequent experience and input, to create administrative rules as an aid to implementing the Ordinance. In addition, some of the procedural aspects of the appeals process, including clarifying what type of documentation will satisfy the requirements for the appeal package, would be best addressed in administrative rules. Doing so will give BDS the flexibility to amend the rules as issues arise and to respond more quickly. There will be a subcommittee, including members of the community, to review these before they become administrative rules.

**Issue:** The Ordinance cannot address all of the various scenarios and questions that arise in specific projects to determine whether a project is a demolition or MRAA.

**Recommendation:** Use the informational guides created by BDS staff as the basis for developing administrative rules that contain specific examples and detailed language for how to apply the Ordinance after review by the Subcommittee.

## I. Amendment to the Ordinance to Address Issues with the Historic Resource Inventory

Since the last major re-write of the Residential Demolition Ordinance in 1990, the residential demolition delay provisions of the City Code have included an exception to delay for structures that are designated historical landmarks, on the Historic Resources Inventory or in historic districts. In these situations, Title 33 (Zoning Code) demolition delay provisions apply. BDS recently discovered that a property could be on the Historic Resources Inventory (HRI) but not be subject to the demolition delay provisions of Title 33 if the property was "unranked." Title 33 demolition delay provisions only apply to properties that are Rank I, II, or III, but there are no delay provisions for "unranked" properties. To prevent properties from having no demolition delay, BDS proposed an amendment to the Demolition Ordinance. The City Council adopted an ordinance in May 2016 to require all residential demolitions to be subject to either 120-day historic resource delay in Title 33 or the Demolition Ordinance 35-day delay.

**Issue:** There was a gap in the applicability of a demolition notice and delay for "unranked" HRI properties.

**Recommendations:** Because the City Council has already adopted an ordinance addressing this gap, no further action is necessary at this time.

## J. Historic Resource Inventory and the Recent Oregon Supreme Court Case

Members of the public and local groups such as Restore Oregon have raised concerns regarding the demolition of homes on the HRI. The Oregon Supreme Court recently issued a decision in which it held that only property owners at the time a local jurisdiction imposes a historical resource designation on their property have the right to remove that designation<sup>1</sup>. In response to that decision, BDS and BPS staff met with their respective City Attorneys and determined that ranked HRI properties that are removed from the HRI list are subject to the 120-day demolition delay in ORS 197.772 (the "Owner Consent Law"). The City previously interpreted the Owner Consent Law to allow property owners to remove their properties from the HRI and not be subject to the 120-day demolition delay. The Owner Consent Law also requires the City to wait 120 days before issuing a permit for modifications, which includes issuing any building, plumbing, electrical or mechanical permit.

<sup>1</sup> See Lake Oswego Preservation Society v. City of Lake Oswego, 360 OR 115 (2016).

**Issue:** Should the 120-day delay for demolition or modification of ranked properties apply to properties that are removed from the HRI?

**Recommendations:** BDS is currently applying the 120-day delay provisions for demolitions and modifications to ranked properties that are removed from the HRI. BPS is proposing language in RICAP 8 to specifically address this issue, so the public and City Council will have an opportunity to fully review and discuss this issue. The recommendation is that the current policy remain in place until the adoption of the Title 33 amendments in RICAP 8. BDS staff will work with BPS staff to draft amendments to the Demolition Delay Ordinance to conform with the RICAP 8 amendments.

#### **K. Ordinance Language Issues**

BDS staff, the Code Hearings Officer, BDS customers and the public have identified language in the Ordinance that needs to be clarified, such as the definition of demolition, what constitutes a “wall” for purposes of a major remodel, whether “reasonable potential to consummate” a plan to purchase or move a property means that plan must be consummated within the 95-day delay period, among other issues. BDS staff has been documenting the recommended language changes and will present proposed amendments to the Council in the near future.

**Issue:** Some of the language in the Ordinance needs to be clarified or amended based on issues that have arisen during implementation.

**Recommendation:** BDS staff will draft proposed language revisions, which will be circulated for review by the City Attorney, the DRAC Demolition Subcommittee, the full DRAC and members of the public. Those proposed revisions will then be presented to the City Council for consideration.

#### **L. Hazardous Materials in Demolitions**

The treatment of hazardous materials related to demolitions has been one of the major issues of concern for the community. Neighbors have asked why the City doesn’t do more to protect the neighbors. The short answer is the City lacks authority to regulate hazardous materials because they are regulated by the State. Since the Ordinance was enacted, the State Legislature enacted SB 705, which requires that an owner have an asbestos survey completed prior to demolishing a 1-2 family residential structure. The State Department of Environmental Quality (DEQ) administers this requirement. Although BDS and community members requested that DEQ include in its implementing regulations for SB 705 a requirement that property owners provide local jurisdictions a copy of the asbestos survey, DEQ chose not to include that requirement. They indicated a concern that smaller jurisdictions would not have the capacity to store or process the documentation.

In addition to asbestos, lead-based paint is a concern in residential demolitions. Federal law, which the State administers, does not require any mitigation for lead-based paint in 1-2 family residential demolitions, and there are no State regulations governing lead-based paint. Many older homes in Portland have lead-based paint, which can become airborne or get into the soil during demolition activities. Although lead-based paint was initially included in SB 705, it was deleted because regulation of lead-based paint is more complicated and required more study.

BDS staff has been meeting with State Legislators to provide input on possible ways to address community concerns with demolition-related hazardous materials in the 2017 legislative cycle. Initial discussions have been focused on asbestos and lead-based paint. Draft legislation should be available in early 2017. BDS will continue to monitor the legislation and provide input.

**Issue:** Hazardous materials released at residential demolition sites is a concern for neighbors and the community. BDS lacks authority to regulate in this area because federal and State laws preempt such local regulations. BDS also does not have the staff or expertise to regulate hazardous materials.

**Recommendations:** Work with State regulatory agencies and members of the Oregon legislature to provide input on State legislation to address hazardous materials at demolition sites.

Stakeholders also raised the concern that hazardous materials notifications via the door hangers don’t reach

enough of the surrounding properties based on how far the materials might travel. They suggested extending the notice area from 10 surrounding properties to 400 feet.

**Issue:** Notification for hazardous materials purposes does not reach enough properties.

**Recommendation:** Review the possibility of extending door hanger notification to more surrounding properties. BDS would work with stakeholders to propose a distance based on empirical data on how far asbestos and lead-based paint could reasonably be expected to travel that is practical to calculate.

#### **M. Notice**

The following issues were raised relating to the notice provisions of the Ordinance:

**Issue:** Notice issues with neighborhood associations and coalitions – who gets notice of demolition permit applications? How to get information on the ONI website updated?

**Recommendation:** BDS has been working with ONI, neighborhood associations and coalitions to get the correct information from the organizations, and ONI is creating a database that will include information on who to contact for different types of notifications.

**Issue:** Is it an option to email demolition notifications to neighborhood associations and coalitions?

**Recommendation:** Not all neighborhood organizations prefer email. BDS will continue discussions to determine the feasibility of using email notifications.

**Issue:** Narrowing the time for posting the door hangers required for demolition permits to within 3-5 days of actual demolition to ensure that neighbors know so they can take precautions for demolition work. Currently, the door hangers are required to be posted 5 days prior to the demolition. This has been interpreted as meaning at least 5 days prior to demolition. However, it could mean that the door hangers are posted far in advance of the work. [Note: this only applies to demolitions because the MRAA door hanger notifications are posted 35 days in advance of work commencing and work can continue for weeks or months.]

**Recommendation:** Work with the Subcommittee to see if there is any problem narrowing the time to 3-5 days from actual commencement of demolition.

**Issue:** There were some complaints about notice of a demolition not being received by recognized organizations.

**Recommendation:** In BDS' experience, this is usually an internal routing issue with a specific organization. We recommend leaving it to each organization to determine its internal procedures and requiring ONI to provide consistent contact information on each neighborhood association and coalition website.

**Issue:** How does the applicant determine which properties to notify when the lots are irregular?

**Recommendation:** BDS works with the applicants if they have specific questions.

**Issue:** Some neighbors questioned why they didn't receive a door hanger.

**Recommendation:** BDS' experience has been the person doesn't realize only the 10 surrounding properties get door hangers, so the person is usually outside of that range.

#### **N. Residential Infill Project**

Members of the public raised concern over the number of demolitions in their neighborhoods and increased density from additional homes that replace the single home being demolished and concern over impact on the character of the neighborhood and parking impacts. Partly in response to issues the public raised during the Ordinance adoption process regarding the drivers and impacts of residential demolitions, the Mayor directed BPS to initiate the Residential Infill Project to explore ways to adapt the City's single-family dwelling portion of the Zoning Code. BPS drafted a proposal that addressed scale of houses, housing types and historically narrow lots and released a report in September 2016 summarizing public comments on the draft proposal. Based on the proposal and City Council recommendations and direction, BPS will propose final code language for City Council consideration in early 2017. See "Residential Infill Project, An Update to Portland's Single-Dwelling Zoning Rules" and "Residential Infill Project Public Comments on the Draft Proposal, Summary Report, September 2016"

available on the BPS website for more information. A Concept Report was also released on October 17, 2016, which is available on the BPS website.

**Issue:** New construction on sites with prior residential demolitions impact the neighborhoods where they occur. These impacts cannot be appropriately addressed through the Demolition Ordinance.

**Recommendations:** Continue monitoring the recommendations of the Residential Infill Project.



## V. SUMMARY OF RECOMMENDATIONS AND NEXT STEPS

### A. Summary of Recommendations

#### Code/Administrative Rules-Related

- Address “pro forma budget” requirement in appeals section
- Consider a requirement that the property owner meet with appellant
- Clarify term “significance to the neighborhood”
- Provide guidance on detail required for the plan to save the structure
- Clarify language regarding when a plan to save the structure needs to be consummated and what needs to occur within the 95-day delay period
- Clarify what constitutes sufficient “funds on hand” and how this is documented
- Allow additional evidence to be submitted at time of hearing, if all of the required appeal documents are submitted with appeal package
- Amend code to limit applicability to 1-2 family dwellings
- Retain limitation of scope to residential structures in areas with Residential Comprehensive Plan Map designation
- Work with Demolition Subcommittee to determine if door hanger notifications for demolitions should be extended to more properties and during a narrower time and propose code changes based on findings
- Amend MRAA provisions to eliminate the wall percentage requirement and replace it with a smaller square footage requirement
- Draft administrative rules that incorporate the information in the informational guides for demolitions and MRAA’s and that clarify the budget and plan requirements, what constitutes “significance to the neighborhood,” how to document funds on hand and other issues
- Propose code changes to the City Council in the next three months to address language and other issues identified in this Implementation Report

#### Business Practices/Implementation-Related

- Seek solutions to address equity issues in the process
- Consider convening a different subcommittee with commercial construction stakeholders to discuss commercial structure demolition issues and housing affordability issues
- Examine funding requirements for any expansion in the scope of the Ordinance
- Continue requiring properties removed from the HRI to comply with 120-day demolition delay
- Continue working with State Legislature on hazardous materials legislation to address hazardous materials issues associated with both residential and commercial demolitions
- Require ONI to provide consistent contact information for each neighborhood association and coalition

### B. Next Steps

BDS staff and the DRAC Demolition Subcommittee will present this Implementation Report to the City Council. Based on input from the Council, BDS staff will re-convene the DRAC Demolition Subcommittee to draft revisions to City Code Chapter 24.55 to present to the City Council for consideration in the next three months. In addition, BDS staff will work with stakeholders to develop administrative rules to assist in administering the Ordinance.